IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.4161 OF 1987

with

CIVIL APPLICATION NO.1479 OF 1988

in

SPECIAL CIVIL APPLICATION NO.4161 OF 1987

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

VAIDYA DEVIPRASAD H. OZA
VERSUS
STATE OF GUJARAT AND ANR.

Appearance:
MR BS SUPEHIA FOR PETITIONER
MR SAMIR DAVE FOR RESPONDENT NO.1
MR DA BAMBHANIA FOR RESPONDENT NO.3

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision: 13/3/2001

C.A.V. JUDGMENT

#. Heard the learned counsel for the parties.

#. The petitioner, an officer of the Health and Family Welfare Department, filed this petition under Article 226 of the Constitution and prayed for the following reliefs:

(A) declaring that the action of the respondents in not granting the petitioner five advance increments on the basis of his experience of five years is illegal, erroneous, arbitrary, discriminatory, malafide and unconstitutional and quash and set aside the same;

(B) declaring that the petitioner was entitled to give advance increments like his colleagues and directing the respondents to grant to the petitioner five advance increments from the date of his appointment;

(C) declaring that the petitioner was entitled to get five advance increments from 1965 the year of his appointment and further directing the authorities to fix the pay of the petitioner accordingly after granting him five increments and to pay the arrears to the petitioner;

(D) declaring that the petitioner is entitled to get arrears from 1965;

Prayer has also been made after filing of this petition for amendment of the petition and three more prayers have been added which are as under:

(DD) declaring that the action of the authorities in not giving copy of the order dt.17.1.78 by which the representation of the petitioner has been turned down and treating it as confidential from the petitioner is against the principles of natural justice, against the basic principles of service jurisprudence and violative of Art.14 and 16 of the Constitution;

(DDD) directing the authorities and particularly respondent No.2-Director to produce copy of the

letter/ order No.ESC/1477/740-Ch dt.17.1.78 confidential by which the representation of the petitioner has been turned down for the perusal of this Hon'ble Court;

(DDDD) quashing and setting aside the order/ letter No.ESC/1477/740-Ch-confidential dt.17.1.78 rejecting the representation of the petitioner on the ground that copy of the same was never given to the petitioner and it was treated as confidential from the petitioner.

#. This petition was presented by the petitioner in the court on 21st August, 1987. Reply to the special civil application has been filed by respondents and copy of the same has been given to the counsel for the petitioner on 21.12.88. Rejoinder to the reply has not been filed by petitioner as it is clearly borne out as I do not find the same on the record. It is also not the case of the learned counsel for the petitioner that rejoinder to the reply has been filed.

#. The petitioner admitted that in the department, there were two posts, namely IMO (Ayurved) Grade-III Junior and IMO (Ayurved) Grade-III Senior. It is also admitted that the pay scale of the post of IMO (Ayurved) Gr.III Jr., i.e. the pay scale of junior officer was Rs.230-460 and that of the IMP (Ayurved) Gr.III Sr., i.e. a senior officer was Rs.270-460, in the year 1965 when the petitioner was appointed. It is also not in dispute that the petitioner was appointed as IMO (Ayurved) Gr.III Junior under the order dated 28.9.1965. It is the grievance of the petitioner that a candidate who has been given appointment and having five years experience or more was given advance increments each of Rs.8/= and in his case these increments were not given. He has given out that the other person who has been appointed along with him has been given these advance grade increments. Reply to the special civil application has been filed and this position has been explained and I am satisfied that this grievance made by the petitioner is wholly untenable, both on facts and law. The petitioner has not filed, as said earlier, rejoinder to the reply and the facts stated in the reply are to be taken to be correct. So the petitioner has not disputed that the other officer whose case has been referred by him in the special civil application was appointed as IMO (Ayurved) Grade III Senior. This initial pay of the Grade III senior officer was Rs.270/= in the pay scale of Rs.270-460 and that of the Grade III Junior officer was Rs.230/= in the pay scale of Rs.230-460. The difference in between these two

of the minimum of the pay scale is of Rs.40/= meaning thereby, it is equivalent to 8x5. From these facts stated in the reply, this claim of the petitioner is wholly misconceived. The other officer was appointed as IMO (Ayurved) Grade III senior in the pay scale of Rs.270-460. The pay was fixed at minimum of pay scale at Rs.270/= and it is wholly fallacious approach of the petitioner that he was given five advance grade increments. The petitioner has no case on merits.

#. Otherwise also, this petition deserves to be dismissed on the ground of delay, laches and acquiescence. The petitioner was appointed in the year 1965 and this grievance made is first made on 14.11.68. He made representations from time to time and those were decided on 14.11.68, 17.3.69 and 19.3.72. The cause of action for this grievance to be made by petitioner accrued to him on 14.11.68 and if the petitioner was really aggrieved of this alleged discrimination, he should have approached the court at the appropriate time but he filed second representation which was dismissed on 17th March 1969. Even thereafter he has not taken any action whatsoever and filed third representation which was also dismissed on 19.3.72. He has not taken action even after this. By filing repeated representations, it is no more res-integra, that the case cannot be kept surviving. I find no perversity and illegality in the approach of the respondents that when the respondents filed representation, they are acknowledging the same and passing some orders and acknowledging accordingly. This repeated filing of representations will not keep the cause of the petitioner surviving which accrued to him on 14th November, 1969. In 1983, again his representation was rejected and what they informed that earlier representation has been decided in 1972. In 1978 also, the matter has been considered and decided. So even if it is taken from any angle, this is nothing but only a stale claim which has been made by petitioner and possibly at the fag end of his retirement.

#. There is yet another ground on which this petition deserves to be dismissed. The petitioner is claiming advance grade increments. Even if the claim of the petitioner would have been accepted, naturally these grade increments are to be adjusted in future increments which fall due. So ultimately the petitioner is not in any manner to suffer on his retirement. It is not the case where any prejudice will be caused to the petitioner in case this petition is dismissed. Whatever the prejudice has been caused is that for these seven years, he would have got some more salary than what he otherwise

got if his claim would have been accepted. But for this also there is no justification for the petitioner to file this petition in the year 1987. By the time this petition has been filed, these five advance increments even if granted would have stood adjusted. Even in fact, in the year 1972, those advance grade increments would have stood adjusted. So this higher pay which would have been received by him is only between the period 1960-72 and for this claim, this is highly a belated writ petition. His pension and other retirementary benefits, as said earlier, will not be affected in any manner.

#. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any earlier granted, stands vacated. No order as to costs.

#. In view of the fact that the special civil application itself has been dismissed, no order on civil application. The civil application is dismissed.

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(sunil)